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8/22/2016 3:05:41 PM  
Hidalgo County District Clerks  
Reviewed By: Leticia Pecina

CAUSE NO. C-3935-16-D

ISRAEL LOPEZ	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HIDALGO COUNTY, TEXAS
	§	
STARSTONE NATIONAL INSURANCE	§	
COMPANY f/k/a TORUS NATIONAL	§	
INSURANCE COMPANY and	§	
NICHOLAS WILSON	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, ISRAEL LOPEZ, Plaintiff herein, who files this his Original Petition against the Defendant, STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY and NICHOLAS WILSON, and for cause of action would respectfully show the court as follows:

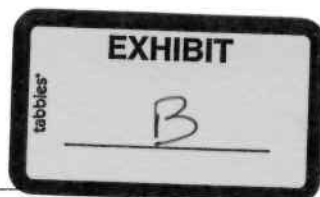
**A. Discovery Control Plan**

1. Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

**B. Parties**

2. Plaintiff, ISRAEL LOPEZ, is an Individual who resides in Hidalgo County, Texas.

3. Defendant STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY is an insurance company registered to engage in the business of insurance in the State of Texas. This Defendant may be served with process by certified mail, return receipt requested, by serving its Attorney for Service, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201.



1

DATE 9/26/16  
A true copy I certify  
LAURA HINOJOSA  
District Clerk, Hidalgo County, Texas  
By [Signature] Deputy #14

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4. Defendant, NICHOLAS WILSON, is a licensed Texas insurance adjuster who may be served with citation via certified mail, return receipt requested at 6801 Calmont Avenue, Fort Worth, TX 76116.

**C. Jurisdiction**

5. The court has jurisdiction over the cause of action because the amount in controversy is within the jurisdictional limits of the court.

6. The Court has jurisdiction over Defendants STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY and NICHOLAS WILSON because Defendants are citizens of the State of Texas and/or engage in the business of insurance in the State of Texas and the cause of action arises out of Defendants' business activities in the State of Texas.

**D. Venue**

7. Venue is proper in Hidalgo County, Texas because the insured property is situated in Hidalgo County, Texas. TEX. CIV. PRAC. & REM. CODE. § 15.032.

**E. Facts**

8. Plaintiff was the owner of Texas Homeowner's Policy number TNI-22835 issued by STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY, Defendant, (hereinafter referred to as "the policy.") Plaintiff owns the insured property (hereinafter referred to as "the property."), which is specifically located at 5409 Astro Drive, Mission, TX 78574.

9. Defendant STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY sold the policy, insuring the property that is the subject

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of this lawsuit, to Plaintiff. The Plaintiff suffered a significant loss with respect to the property as a result of wind and/or hail.

10. Plaintiff submitted a claim to Defendant with date of loss December 26, 2015 for wind and/or hail damage to the dwelling and contents of the home.

11. Defendants assigned claim number **TOR-75627** to Plaintiff's claim.

12. Defendants failed to properly adjust the claim and summarily improperly paid the claim with obvious knowledge and evidence of serious cosmetic and structural damage. Specifically, Defendant NICHOLAS WILSON represented to Plaintiff that the damages were not covered and to the extent they were covered by the policy, they did not exceed the deductible. This misrepresentation of damages in contradiction to the policy benefits forced the Plaintiff to cover all of the cost of repairs out of pocket despite the existence of indemnity under the policy or file suit to recover cost of repairs owed.

13. Defendants improperly paid Plaintiff's claim for replacement of the property by not providing full coverage for all areas of damage to the property, even though the policy provided coverage for losses such as those suffered by Plaintiff.

14. Defendants failed to perform their contractual duty to adequately compensate Plaintiff under the terms of the policy. Defendants failed and refused to pay the full proceeds of the policy, although due demand was made for proceeds to be paid in an amount sufficient to cover the damaged property and all conditions precedent to recovery upon the policy had been carried out and accomplished by Defendants. Such conduct constitutes breach of the insurance contract between Defendants and Plaintiff.



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15. Defendants misrepresented to Plaintiff that the damage to the property was not in excess to the amount paid, even though the damage was caused by a covered occurrence. Defendants' conduct constitutes violations of the Texas Insurance Code.

16. Defendants failed to make an attempt to settle Plaintiff's claim in a fair manner, although they were aware of their liability to Plaintiff under the policy. Defendants' conduct constitutes violations of the *Texas Unfair Competition and Unfair Practices Act*. TEX. INS. CODE. Section 541.060(2).

17. Defendants failed to explain to Plaintiff the reasons for their offer of an inadequate settlement. Specifically, Defendants failed to offer Plaintiff adequate compensation, without any explanations why full payment was not being made. Furthermore, Defendants did not communicate that any future settlements or payments would be forthcoming to pay for the entire losses covered under the policies, nor did it provide any explanation for the failure to adequately settle Plaintiff claim. Defendants' conduct constitutes violations of the *Texas Unfair Competition and Unfair Practices Act*. TEX. INS. CODE. Section 541.060(3).

18. Defendants failed to affirm or deny coverage of Plaintiff's claims within a reasonable time. Specifically, Plaintiff did not receive timely indication of acceptance or rejection, regarding the full and entire claims, in writing from Defendants. Defendants' conduct constitutes violations of the *Texas Unfair Competition and Unfair Practices Act*. TEX. INS. CODE. Section 541.060(4).

19. Defendants refused to fully compensate Plaintiff, under the terms of the policy, even though Defendants failed to conduct a reasonable investigation. Specifically, Defendants performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair and inequitable evaluation of Plaintiff's losses on the property. Defendants' conduct

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constitutes violations of the *Texas Unfair Competition and Unfair Practices Act*. TEX. INS. CODE. Section 541.060(7).

20. Defendants failed to meet their obligations under the Texas Insurance Code regarding acknowledging Plaintiff's claims, beginning investigations to Plaintiff's claims and requesting all information reasonably necessary to investigate Plaintiff's claim within fifteen (15) days of receiving notice of Plaintiff claims. Defendants' conduct constitutes violations of the *Texas Prompt Payment of Claims Act*. TEX. INS. CODE. Section 542.055.

21. Defendants failed to accept or deny Plaintiff's full and entire claims within fifteen (15) business days of receiving all required information. Defendants' conduct constitutes a violation of the *Texas Prompt Payment of Claims Act*. TEX. INS. CODE. Section 542.056.

22. Defendants failed to meet their obligations under the Texas Insurance Code regarding payment of claims without delay. Specifically, Defendants have delayed full payment of Plaintiff's claims longer than allowed and, to date, Plaintiff has not yet received full payment for the claims. Defendants' conduct constitutes a violation of the *Texas Prompt Payment of Claims Act*. TEX. INS. CODE. Section 542.055.

23. From and after the time Plaintiff's claims were presented to Defendants, the liability of Defendants to pay the full claims in accordance with the terms of the policy was reasonably clear. However, Defendants have refused to pay Plaintiff in full, despite there being no basis whatsoever on which a reasonable insurance company would have relied on to deny the full payment. Defendants' conduct constitutes breaches of the common law duty of good faith and fair dealing.

24. As a result of Defendants' acts and omissions, Plaintiff was forced to retain the attorney who is representing Plaintiff in this cause of action.

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25. Plaintiff's experience is not an isolated case. The acts and omissions Defendants committed in this case, or similar acts and omissions, occur with such frequency that they constitute a general business practice of Defendants with regard to handling these types of claims. Defendants' entire process is unfairly designed to reach favorable outcomes for the company at the expense of the policyholders.

#### **F. Causes of Action**

##### **Causes of Action Against Defendants**

26. Defendant, STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY is liable to Plaintiff for intentional breach of contract, as well as intentional violations of the *Texas Unfair Competition and Unfair Practices Act*, the *Texas Prompt Payment of Claims Act*, and intentional breach of good faith and fair dealing. Defendant, NICHOLAS WILSON, is liable to Plaintiff for intentional violations of the *Texas Unfair Competition and Unfair Practices Act*, and the *Texas Prompt Payment of Claims Act*.

#### **G. Breach of Contract**

27. Defendant STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY's conduct, as described above, constitutes a breach of the insurance contract made between Defendant and Plaintiff.

28. Defendant's failure and refusal, as described above, to pay the adequate compensation as it is obligated to do under the terms of the policy in question and under the laws of the State of Texas, constitutes material breaches of the insurance contract with Plaintiff. Plaintiff has suffered damages in the form of actual damages, consequential damages and reasonable and necessary attorney's fees.



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**Violations of the Texas Insurance Code**

**Noncompliance with Texas Insurance Code Chapter 541: "Unfair Competition and Unfair Practices Act"**

29. Defendants, STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY and NICHOLAS WILSON's conduct constitutes multiple violations of the *Texas Unfair Competition and Unfair Practices Act*. TEX. INS. CODE Chapter 541. All violations under this article are made actionable by TEX. INS. CODE Section 541.151.

30. Defendants' unfair practice, as described above, of misrepresenting to Plaintiff material facts relating to the coverage at issue, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE Sections 541.051, 541.060 and 541.061.

31. Defendants' unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claims, even though Defendants' liability under the policy was reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE Sections 541.051, 541.060 and 541.061.

32. Defendants' unfair settlement practice, as described above, of failing to promptly provide Plaintiff with a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for its offer of a compromise settlement of the claims, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE ANN. Sections 541.051, 541.060 and 541.061.

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33. Defendants' unfair settlement practice, as described above, of failing within a reasonable time to affirm or deny coverage of the claims Plaintiff or to submit a reservation of rights to Plaintiff, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE Sections 541.051, 541.060 and 541.061.

34. Defendants' unfair settlement practice, as described above, of refusing to pay Plaintiff's claims without conducting a reasonable investigation, constitutes an unfair method of competition an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE Sections 541.051, 541.060 and 541.061.

**Noncompliance with Texas Insurance Code Chapter 542: "The Prompt Payment of Claims Act"**

35. Defendants, STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY and NICHOLAS WILSON'S conduct constitutes multiple violations of the *Texas Prompt Payment of Claims Act*. TEX. INS. CODE Chapter 542. All violations made under this article are made actionable by TEX. INS. CODE Section 542.060.

36. Defendants' failure, as described above, to acknowledge receipt of Plaintiff's claims, commence investigation of the claims, and request from Plaintiff all items, statements, and forms that they reasonable believed would be required within the applicable time constraints, constitutes a non-payment of the claims. TEX. INS. CODE Sections 542.055-542.060.

37. Defendants' delay of payment of Plaintiff's claims, as described above, following its receipt of all items, statements, and forms reasonably requested and required, longer than the amount of time provided for, constitutes a non-prompt payment of the claims. TEX. INS. CODE Sections 542.055-542.060.



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**Breach of the Duty of Good Faith and Fair Dealing**

38. Defendant STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to insureds in insurance contracts.

39. Defendant's failure, as described above, to adequately and reasonably investigate and evaluate Plaintiff's claims, although at that time Defendant knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear, constitutes a breach of the duty of good faith and fair dealing.

**H. Knowledge and Intent**

40. Each of the acts described above, together and singularly, was done "knowingly" and "intentionally" and was a producing cause of Plaintiffs' damages described herein.

**I. Texas Deceptive Trade Practices Act**

41. Each of the acts described above, together and singularly, constitute a violation of the Texas Deceptive Trade Practices Act pursuant to its tie-in provision for Insurance Code Violations. Accordingly, Plaintiff also brought each and every cause of action alleged above under the Texas Deceptive Trade Practices Act pursuant to its tie-in provision.

42. At all times material hereto, Plaintiff was a consumer who purchased insurance products and services from Defendant, STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY. Defendant, STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY has violated the Texas Deceptive Trade Practices Act in the following manners:

- a. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

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- b. Representing the goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
- c. Advertising goods or services with intent not to sell them as advertised;
- d. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- e. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- f. Misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction; and
- g. Failing to disclose information concerning goods or services which was known at the time of the transaction and such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;
- h. Engaging in an unconscionable course of conduct.

**J. Damages and Prayer**

44. WHEREFORE, PREMISES CONSIDERED, Plaintiff herein, ISRAEL LOPEZ complains of STARSTONE NATIONAL INSURANCE COMPANY f/k/a TORUS NATIONAL INSURANCE COMPANY and NICHOLAS WILSON and prays that Defendants be cited to appear and answer and that on a final trial on the merits, Plaintiff recover from Defendants the following:

45. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and/or producing causes of damages sustained by Plaintiff.

46. For breach of contract, Plaintiff is entitled to regain the benefit of his bargain, which is the amount of the claims, together with attorney's fees.

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47. For noncompliance with the *Texas Unfair Competition and Unfair Practices Act*, Plaintiff is entitled to actual damages, which includes the loss of the benefits that should have been paid pursuant to the policy, including but not limited to direct and indirect consequential damages, mental anguish, court costs and attorney's fees. For knowing conduct of the acts complained of, Plaintiff asks for three times his actual damages. TEX. INS. CODE ANN. Section 541.060.

48. For noncompliance with *Texas Prompt Payment of Claims Act*, Plaintiff is entitled to the amount of his claims, as well as eighteen (18) percent interest per annum postjudgment interest, as allowed by law, and for any other further relief, either at law or in equity, to which he may show himself to be justly entitled.

49. For breach of the duty of good faith and fair dealing, exemplary damages as to be determined by the jury.

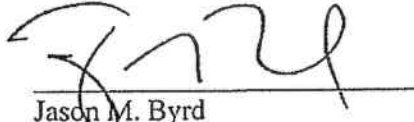


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Respectfully submitted,

THE BYRD LAW FIRM, P.C.




Jason M. Byrd  
State Bar No. 24036303  
Jason@txbyrd.com  
448 Orleans Street  
Beaumont, Texas 77701  
(409) 924-0660/(409) 924-0035  
ATTORNEY FOR PLAINTIFF

-AND-

CHRIS TAMEZ  
State Bar No. 24033256  
TAMEZ & ORTEGON, PLLC  
1009 East Expressway 83  
Pharr, Texas 78577  
(956) 630-0885 Phone  
(956) 683-0485 Fax  
Email: [tamezandortegon@gmail.com](mailto:tamezandortegon@gmail.com)  
ATTORNEY FOR PLAINTIFF

**JURY DEMAND**

Plaintiff respectfully demands a trial by jury.

  
Jason M. Byrd

**THE BYRD LAW FIRM**  
HOUSTON I BEAUMONT  
Attorneys at Law  
[www.txbyrd.com](http://www.txbyrd.com)

448 Orleans  
Beaumont, Texas 77701

409.924.0660 Telephone  
409.924.0035 Facsimile

August 22, 2016

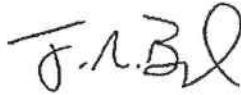
Laura Hinojosa  
Hidalgo District Clerk  
P.O. Box 87  
Edinburg, Texas 78539

RE: Cause No. C-3935-16-D; *Israel Lopez v Starstone National Insurance Company*  
*f/k/a Torus National Insurance Company and Nicholas Wilson*; In the \_\_\_\_\_ District  
Court of Hidalgo County, Texas

Dear Ms. Hinojosa:

Plaintiff hereby demands a Jury Trial.

Sincerely,



Jason M. Byrd  
For the Firm

JMB/ms  
Enclosures

DATE 9/26/16  
A true copy I certify  
LAURA HINOJOSA  
District Clerk, Hidalgo County, Texas  
By [Signature] Deputy #14

**THE BYRD LAW FIRM**

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Attorneys at Law

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August 22, 2016

Laura Hinojosa  
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RE: Cause No. C-3935-16-D; *Israel Lopez v Starstone National Insurance Company f/k/a Torus National Insurance Company and Nicholas Wilson*; In the \_\_\_\_\_ District Court of Hidalgo County, Texas

Dear Ms. Hinojosa:

Please prepare the following citation as follows:

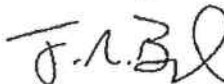
**Starstone National Insurance Company f/k/a Torus National Insurance Company**, by serving its Attorney for Service, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201, via Certified United States Mail, Return Receipt Requested.

**Nicholas Wilson**, by serving him at 6801 Calmont Ave., Fort Worth, Texas 76116, via Certified United States Mail, Return Receipt Requested.

If possible please return the prepared citation to our office via email to [misty@txbyrd.com](mailto:misty@txbyrd.com). Our office will secure service through a private process server.

If you have any questions, please feel free to contact our office.

Sincerely,



Jason M. Byrd  
For the Firm

/ms  
Enclosures

DATE 9/26/16  
A true copy/I certify  
**LAURA HINOJOSA**  
District Clerk, Hidalgo County, Texas  
By [Signature] Deputy #14



## CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): **C-3935-16-D**

COURT (FOR CLERK USE ONLY):

STYLED **ISRAEL LOPEZ VS. STARSTONE NATIONAL INSURANCE COMPANY AND NICHOLAS WILSON**

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b> Name: <u>Jason Byrd</u> Email: <u>Jason@txbyrd.com</u> Address: <u>448 Orleans St</u> Telephone: <u>409 924 0660</u> City/State/Zip: <u>Beaumont, TX 77701</u> Fax: <u>409 924 0035</u> Signature: <u>[Signature]</u> State Bar No: <u>24036303</u>		<b>Names of parties in case:</b> Plaintiff(s)/Petitioner(s): <u>Israel Lopez</u> Defendant(s)/Respondent(s): <u>Starstone National Insurance Company</u> <u>And Nicholas Wilson</u> (Attach additional page as necessary to list all parties)		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____																																																	
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>																																																					
<table border="1"> <thead> <tr> <th colspan="3">Civil</th> <th colspan="3">Family Law</th> </tr> </thead> <tbody> <tr> <td> <b>Contract</b>  <input type="checkbox"/> Debt/Contract  <input type="checkbox"/> Consumer/DTPA  <input type="checkbox"/> Debt/Contract  <input type="checkbox"/> Fraud/Misrepresentation  <input type="checkbox"/> Other Debt/Contract:  <b>Foreclosure</b>  <input type="checkbox"/> Home Equity—Expedited  <input type="checkbox"/> Other Foreclosure  <input type="checkbox"/> Franchise  <input checked="" type="checkbox"/> Insurance  <input type="checkbox"/> Landlord/Tenant  <input type="checkbox"/> Non-Competition  <input type="checkbox"/> Partnership  <input type="checkbox"/> Other Contract:            _____         </td> <td> <b>Injury or Damage</b>  <input type="checkbox"/> Assault/Battery  <input type="checkbox"/> Construction  <input type="checkbox"/> Defamation  <b>Malpractice</b>  <input type="checkbox"/> Accounting  <input type="checkbox"/> Legal  <input type="checkbox"/> Medical  <input type="checkbox"/> Other Professional Liability:  <input type="checkbox"/> Motor Vehicle Accident  <input type="checkbox"/> Premises  <b>Product Liability</b>  <input type="checkbox"/> Asbestos/Silica  <input type="checkbox"/> Other Product Liability            List Product:            _____  <input type="checkbox"/> Other Injury or Damage:            _____         </td> <td> <b>Real Property</b>  <input type="checkbox"/> Eminent Domain/Condemnation  <input type="checkbox"/> Partition  <input type="checkbox"/> Quiet Title  <input type="checkbox"/> Trespass to Try Title  <input type="checkbox"/> Other Property:            _____  <b>Related to Criminal Matters</b>  <input type="checkbox"/> Expunction  <input type="checkbox"/> Judgment Nisi  <input type="checkbox"/> Non-Disclosure  <input type="checkbox"/> Seizure/Forfeiture  <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment  <input type="checkbox"/> Other: _____         </td> <td> <b>Marriage Relationship</b>  <input type="checkbox"/> Annulment  <input type="checkbox"/> Declare Marriage Void  <b>Divorce</b>  <input type="checkbox"/> With Children  <input type="checkbox"/> No Children  <b>Other Family Law</b>  <input type="checkbox"/> Enforce Foreign Judgment  <input type="checkbox"/> Habeas Corpus  <input type="checkbox"/> Name Change  <input type="checkbox"/> Protective Order  <input type="checkbox"/> Removal of Disabilities of Minority  <input type="checkbox"/> Other: _____         </td> <td colspan="2"> <b>Post-judgment Actions (non-Title IV-D)</b>  <input type="checkbox"/> Enforcement  <input type="checkbox"/> Modification—Custody  <input type="checkbox"/> Modification—Other  <b>Title IV-D</b>  <input type="checkbox"/> Enforcement/Modification  <input type="checkbox"/> Paternity  <input type="checkbox"/> Reciprocals (UIFSA)  <input type="checkbox"/> Support Order  <b>Parent-Child Relationship</b>  <input type="checkbox"/> Adoption/Adoption with Termination  <input type="checkbox"/> Child Protection  <input type="checkbox"/> Child Support  <input type="checkbox"/> Custody or Visitation  <input type="checkbox"/> Gestational Parenting  <input type="checkbox"/> Grandparent Access  <input type="checkbox"/> Paternity/Parentage  <input type="checkbox"/> Termination of Parental Rights  <input type="checkbox"/> Other Parent-Child:            _____         </td> </tr> <tr> <td> <b>Employment</b>  <input type="checkbox"/> Discrimination  <input type="checkbox"/> Retaliation  <input type="checkbox"/> Termination  <input type="checkbox"/> Workers' Compensation  <input type="checkbox"/> Other Employment:            _____         </td> <td colspan="2"> <b>Other Civil</b>  <input type="checkbox"/> Administrative Appeal  <input type="checkbox"/> Antitrust/Unfair Competition  <input type="checkbox"/> Code Violations  <input type="checkbox"/> Foreign Judgment  <input type="checkbox"/> Intellectual Property  <input type="checkbox"/> Lawyer Discipline  <input type="checkbox"/> Perpetuate Testimony  <input type="checkbox"/> Securities/Stock  <input type="checkbox"/> Tortious Interference  <input type="checkbox"/> Other: _____         </td> <td colspan="3"></td> </tr> <tr> <td colspan="2"> <b>Tax</b>  <input type="checkbox"/> Tax Appraisal  <input type="checkbox"/> Tax Delinquency  <input type="checkbox"/> Other Tax: _____         </td> <td colspan="4"> <b>Probate &amp; Mental Health</b>  <b>Probate/Wills/Intestate Administration</b>  <input type="checkbox"/> Dependent Administration  <input type="checkbox"/> Independent Administration  <input type="checkbox"/> Other Estate Proceedings  <input type="checkbox"/> Guardianship—Adult  <input type="checkbox"/> Guardianship—Minor  <input type="checkbox"/> Mental Health  <input type="checkbox"/> Other: _____         </td> </tr> <tr> <td colspan="6"> <b>3. 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Electronically Filed

8/23/2016 8:53:51 AM

Hidalgo County District Clerks

Reviewed By: Monica Castellanos

LAURA HINOJOSA

Greetings:

Attached you will find the service requested.

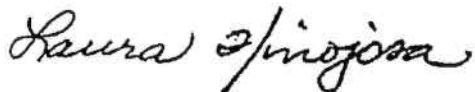
May this serve to inform you that service has been issued. Please proceed in attaching any file stamped documents that need to be served as stated on your issued service.

Please note, the link you are about to open is a "live link" notification. Please ensure you are printing the service which includes our clerk's signature and the State Seal. If you are opening a document without the official certifications (signature and seal) please close the window until the document is processed accordingly. This may take a few minutes.

\*When serving protective orders, please DO NOT serve the TCIC form to respondent.

We appreciate the opportunity to assist you. Please contact our office if you have any questions or require additional information.

Sincerely,



Laura Hinojosa  
Hidalgo County District Clerk

DATE 9/26/16  
A true copy I certify  
LAURA HINOJOSA  
District Clerk, Hidalgo County, Texas  
By [Signature] Deputy#14

P.O. BOX 87 EDINBURG, TEXAS 78540 districtclerk@co.hidalgo.tx.us OFFICE (956) 318-2200 FAX (956) 318-2251

Nilda VanHook  
CHIEF DEPUTY

Ricardo Contreras  
CHIEF OF  
ADMINISTRATION  
& PUBLIC INFORMATION

Adriana "Audry"  
Garcia  
ASSISTANT  
CHIEF DEPUTY

Sabrina S.  
Guerro  
SENIOR  
ACCOUNTANT

Oneida Lamas  
DEPUTY DISTRICT  
CLERK SUPERVISOR

Stephanie Polacios  
BUDGET &  
PROCUREMENT  
OFFICER

Aida Villarreal  
CHIEF OF APPEALS



C-3935-16-D  
206TH DISTRICT COURT, HIDALGO COUNTY, TEXAS

CITATION

STATE OF TEXAS

**NOTICE TO DEFENDANT:** You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served with this citation and petition, a default judgment may be taken against you.

**NICHOLAS WILSON**  
6801 CALMONT AVE.  
FORTH WORTH, TEXAS 76116

You are hereby commanded to appear by filing a written answer to the **PLAINTIFF'S ORIGINAL PETITION** on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the **Honorable Rose G. Reyna, 206th District Court** of Hidalgo County, Texas at the Courthouse at 100 North Closner, Edinburg, Texas 78539.

Said petition was filed on this the 22nd day of August, 2016 and a copy of same accompanies this citation. The file number and style of said suit being C-3935-16-D.

**ISRAEL LOPEZ V S. STARSTONE NATIONAL INSURANCE COMPANY  
TFK/A TORUS NATIONAL INSURANCE COMPANY AND NICHOLAS  
WILSON**

Said Petition was filed in said court by ATTY: JASON M. BYRD, 448 ORLEANS STREET, BEAUMONT, TX 77701.

The nature of the demand is fully shown by a true and correct copy of the petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

**ISSUED AND GIVEN UNDER MY HAND AND SEAL** of said Court at Edinburg, Texas on this the 23rd day of August, 2016.

**LAURA HINOJOSA, DISTRICT CLERK**  
100 N. CLOSNER, EDINBURG, TEXAS  
HIDALGO COUNTY, TEXAS

  
\_\_\_\_\_  
MONICA E. CASTELLANOS, DEPUTY CLERK



DATE

9/26/16  
A true copy I certify  
LAURA HINOJOSA

District Clerk, Hidalgo County, Texas

By

Deputy#14



**C-3935-16-D**  
**OFFICER'S RETURN**

Came to hand on \_\_\_\_ of \_\_\_\_\_, 201\_\_\_\_ at \_\_\_\_ o'clock \_\_\_\_m. and executed in \_\_\_\_\_ County, Texas by delivering to each of the within named Defendant in person, a true copy of this citation, upon which I endorsed the date of delivery to said Defendant together with the accompanying copy of the \_\_\_\_\_ (petition) at the following times and places, to-wit:

NAME	DATE	TIME	PLACE

And not executed as to the defendant, \_\_\_\_\_ the diligence used in finding said defendant, being: \_\_\_\_\_ and the cause of failure to execute this process is: \_\_\_\_\_ and the information received as to the whereabouts of said defendant, being: \_\_\_\_\_. I actually and necessarily traveled \_\_\_\_\_ miles in the service of this citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

Fees: serving ... copy(s) \$ \_\_\_\_\_  
 miles .....\$ \_\_\_\_\_

**DEPUTY**

**COMPLETE IF YOU ARE PERSON OTHER THAN A SHERIFF,  
 CONSTABLE OR CLERK OF THE COURT**

In accordance to Rule 107, the officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return must either be verified or be signed under the penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_ and the address is \_\_\_\_\_, and I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED in \_\_\_\_\_ County, State of Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
 Declarant"

\_\_\_\_\_  
 If Certified by the Supreme Court of Texas  
 Date of Expiration / SCH Number

**C-3935-16-D**  
**206TH DISTRICT COURT, HIDALGO COUNTY, TEXAS**

**CITATION**

**STATE OF TEXAS**

**NOTICE TO DEFENDANT:** You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served with this citation and petition, a default judgment may be taken against you.

**STARSTONE NATIONAL INSURANCE COMPANY**  
**F/K/A TORUS NATIONAL INSURANCE COMPANY**  
**CT CORPATION SYSTEM**  
**1999 BRYAN STREET, SUITE 900**  
**DALLAS TX 75201**

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**100 N. CLOSNER, EDINBURG, TEXAS**  
**HIDALGO COUNTY, TEXAS**

  
**MONICA E. CASTELLANOS, DEPUTY CLERK**



DATE 9/26/16  
A true copy I certify  
**LAURA HINOJOSA**  
District Clerk, Hidalgo County, Texas  
By M Deputy #14

**C-3935-16-D**  
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Fees: serving ... copy(s) \$ \_\_\_\_\_  
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EXECUTED in \_\_\_\_\_ County, State of Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
 Declarant?"

\_\_\_\_\_  
 If Certified by the Supreme Court of Texas  
 Date of Expiration / SCH Number



CAUSE NO. C-3935-16-D

ISRAEL LOPEZ

VS.

STARSTONE NATIONAL INSURANCE  
COMPANY f/k/a TORUS NATIONAL  
INSURANCE COMPANY and  
NICHOLAS WILSON

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

206<sup>TH</sup> JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

**DEFENDANT STARSTONE NATIONAL INSURANCE COMPANY F/K/A TORUS  
NATIONAL INSURANCE COMPANY'S ORIGINAL ANSWER  
AND PLEA IN ABATEMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, STARSTONE NATIONAL INSURANCE COMPANY F/K/A TORUS NATIONAL INSURANCE COMPANY, Defendant in the above-styled and numbered cause and makes and files this, its Original Answer in reply to Plaintiff's Petition, and for such answer and plea in abatement would respectfully show unto the Court the following:

1.

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies the allegations contained within Plaintiff's Petition and demand strict proof thereon by a preponderance of the credible evidence in accordance with the laws of the State of Texas.

2.

Pleading further and without waiver of the above, Defendant denies the occurrence of all conditions precedent to Plaintiff's claim. Without limiting the foregoing, Defendant denies that the following has occurred:

- a. that there has been full compliance with all terms and conditions of the insurance policy at issue as required prior to Plaintiff bringing suit, including, but not limited to, the requirement that payment is only due after agreement is reached on the amount of loss or an appraisal award has been made; and

DATE 9/26/16  
A true copy I certify  
LAURA HINOJOSA  
District Clerk, Hidalgo County, Texas  
By [Signature] Deputy #14

- b. that Plaintiff has provided the required written notice under Section 541.154 of the Texas Insurance Code at least 60 days prior to filing suit.

3.

Pleading further and without waiver of the above, Defendant requests that this Court compel mediation pursuant to TEXAS INSURANCE CODE § 541.161(a). This mediation is required under the Texas Insurance Code and Texas Business & Commerce Code. TEX. INS. CODE § 541.161(b).

4.

**PLEA IN ABATEMENT**

A. Plaintiff has asserted claims against Defendant pursuant to Chapter 17.50 of the Texas Business & Commerce Code (also referred to as the "DTPA") in Plaintiff's Original Petition. As a prerequisite to filing a suit seeking damages pursuant to the DTPA, a claimant shall give written notice at least sixty (60) days prior to filing suit. A Defendant against whom a suit is pending who does not receive adequate written notice may file a plea in abatement. TEX. BUS. & COM. CODE §17.505(Vernon 1987).

B. Defendant has not received adequate written notice in compliance with the requirements of the DTPA.

C. Accordingly, Defendant requests that this Court abate this case as provided by Section 17.505(d) of the Texas Business & Commerce Code.

5.

**PLEA IN ABATEMENT**

A. In Plaintiff's Original Petition, Plaintiff has also alleged causes of action pursuant to Chapter 541 of the Texas Insurance Code. Chapter 541.154 provides, in pertinent part, "[a] person seeking damages in an action against another person under this subchapter must provide

written notice to the other person not later than the 61<sup>st</sup> day before the date the action is filed.”

TEX. INS. CODE §541.154 (Vernon Supp 2005). Additionally, Chapter 541.155 of the Texas Insurance Code provides that the Court shall abate the action if the Court finds that the claimant failed to provide the requisite notice. TEX. INS. CODE §541.155 (Vernon Supp 2005).

B. Defendant has not received adequate written notice in compliance with the requirements of the Texas Insurance Code.

C. Accordingly, Defendant is also entitled to an abatement of these proceedings pursuant to Chapter 541 of the Texas Insurance Code.

6.

Additionally, the insurance policy pertaining to the claims asserted by the Plaintiff includes a specific “Appraisal” clause which sets forth the procedure in the event of a disagreement of the amount of the loss. Specifically, the policy requires that, upon written request, the property must be appraised by each party’s own independent appraiser. In the event of a disagreement in the appraisal, the differences are submitted to an umpire for determination. Defendant insurance company was potentially deprived of the opportunity to invoke the appraisal clause prior to suit. Further, the lawsuit potentially prevented Defendant insurance company from attempting to resolve the alleged problems, reaching an impasse or invoking the appraisal clause, if necessary. Defendant insurance company reserves the contractual right to invoke this clause and that the property be appraised according to the terms of the applicable insurance policy if the parties reach an impasse. Defendant insurance company has not waived and is not waiving this provision and may assert it in the future.



7.

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendant hereby gives actual notice to Plaintiff that any and all documents and materials produced in response to written discovery may be used as evidence in this case; and, that any such materials may be used as evidence against the party producing the document at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the document and/or materials produced in discovery.

8.

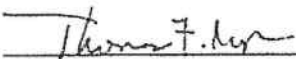
Requests for Disclosure

At the time required by law or the Rules, this Defendant requests the Plaintiff to respond to all of the matters in TRCP 194.2.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon final hearing hereof, that Plaintiff not recover against Defendant and that Defendant goes hence with its costs without day and for such other and further relief, at law or in equity, to which Defendant may justly show itself entitled to receive.

Respectfully submitted,

Gault, Nye & Quintana, L.L.P.  
P.O. Box 6666  
Corpus Christi, Texas 78466  
(361) 654-7008  
(361) 654-7001 Telecopier  
[tnye@gnqlawyers.com](mailto:tnye@gnqlawyers.com)

By:   
Thomas F. Nye  
State Bar No. 15154025

Electronically Filed  
9/16/2016 1:27:49 PM  
Hidalgo County District Clerks  
Reviewed By: Armando Cantu

William Gault  
State Bar No. 07765050  
Gault, Nye & Quintana, L.L.P.  
P.O. Box 5959  
Brownsville, Texas 78523  
(956) 544-7110  
(956) 544-0607 Telecopier  
[bgault@gnqlawyers.com](mailto:bgault@gnqlawyers.com)

Attorneys for Defendant Starstone National  
Insurance Company

**CERTIFICATE OF SERVICE**

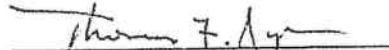
I, Thomas F. Nye, hereby certify that on the 16<sup>th</sup> day of September, 2016, a true and correct copy of the above and foregoing document was served upon the following counsel as indicated:

**Attorneys for Plaintiff**

Jason M. Byrd  
The Byrd Law Firm, P.C.  
Email: [jason@txbyrd.com](mailto:jason@txbyrd.com)

Chris Tamez  
Tamez & Ortegon, PLLC  
Email: [jamezandortegon@gmail.com](mailto:jamezandortegon@gmail.com)

**VIA E-FILING**

  
Thomas F. Nye

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9/16/2016 1:27:49 PM  
Hidalgo County District Clerks  
Reviewed By: Armando Cantu

VERIFICATION OF R. TRAVIS MILLER

THE STATE


§  
§  
§

OF TEXAS

BEFORE ME, the undersigned Notary Public in and for the State of Texas, on this day personally appeared R. Travis Miller, known to me to be the person whose name is subscribed hereto, who being first duly sworn in the manner provided by law, on oath stated as follows:


"My name is R. Travis Miller. I am an Authorized Agent for Starstone National Insurance Company, am over the age of 18 years, am competent and authorized to testify herein and have personal knowledge of the facts herein. I have read Paragraphs 4B and 5B of Defendant's Original Answer and they are true and correct."


Further affiant sayeth not.

  
R. Travis Miller, Authorized Agent for  
Starstone National Insurance Company

SWORN TO AND SUBSCRIBED TO BEFORE ME, on this the 16<sup>th</sup> day of September, 2016, to witness my hand and official seal of office.



  
Notary Public in and for  
the State of Texas

DATE 9/26/16  
A true copy I certify  
LAURA HINOJOSA  
District Clerk, Hidalgo County, Texas  
By  Deputy #14



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9/16/2016 1:27:49 PM  
Hidalgo County District Clerks  
Reviewed By: Armando Cantu

CAUSE NO. C-3935-16-D

ISRAEL LOPEZ	§	IN THE DISTRICT COURT
	§	
VS.	§	206 <sup>TH</sup> JUDICIAL DISTRICT
	§	
STARSTONE NATIONAL INSURANCE	§	
COMPANY I/k/a TORUS NATIONAL	§	
INSURANCE COMPANY and	§	
NICHOLAS WILSON	§	HIDALGO COUNTY, TEXAS

**DEFENDANT'S DEMAND FOR JURY**

COMES NOW, STARSTONE NATIONAL INSURANCE COMPANY F/K/A TORUS NATIONAL INSURANCE COMPANY, Defendant in the above-referenced cause, and demands a trial by jury. The jury fee has previously been paid by the Plaintiff.

Respectfully submitted,

Gault, Nye & Quintana, L.L.P.  
P.O. Box 6666  
Corpus Christi, Texas 78466  
(361) 654-7008  
(361) 654-7001 Telecopier  
[tnye@gnqlawyers.com](mailto:tnye@gnqlawyers.com)

By: Thomas F. Nye  
Thomas F. Nye  
State Bar No. 15154025

William Gault  
State Bar No. 07765050  
Gault, Nye & Quintana, L.L.P.  
P.O. Box 5959  
Brownsville, Texas 78523  
(956) 544-7110  
(956) 544-0607 Telecopier  
[bgault@gnqlawyers.com](mailto:bgault@gnqlawyers.com)

Attorneys for Defendant Starstone National  
Insurance Company

DATE 9/26/16  
A true copy I certify  
LAURA HINOJOSA  
District Clerk, Hidalgo County, Texas  
By [Signature] Deputy #14

Electronically Filed  
9/16/2016 1:27:49 PM  
Hidalgo County District Clerks  
Reviewed By: Armando Cantu

CERTIFICATE OF SERVICE

I, Thomas F. Nye, hereby certify that on the 16<sup>th</sup> day of September, 2016, a true and correct copy of the above and foregoing document was served upon the following counsel as indicated:

Attorneys for Plaintiff

James M. Byrd  
The Byrd Law Firm, P.C.  
Email: [jason@txbyrd.com](mailto:jason@txbyrd.com)

Chris Tamez  
Tamez & Ortegon, PLLC  
Email: [tamezandortegon@gmail.com](mailto:tamezandortegon@gmail.com)

VIA E-FILING

  
Thomas F. Nye

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9/22/2016 2:34:14 PM  
Hidalgo County District Clerks  
Reviewed By: Matthew Padron

## CAUSE NO. C-3935-16-D

ISRAEL LOPEZ	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HIDALGO COUNTY, TEXAS
	§	
STARSTONE NATIONAL INSURANCE	§	
COMPANY f/k/a TORUS NATIONAL	§	
INSURANCE COMPANY and	§	
NICHOLAS WILSON	§	206 <sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFF'S VERIFIED RESPONSE TO DEFENDANT'S  
VERIFIED PLEA IN ABATEMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Israel Lopez, Plaintiff herein, and files this his Verified Response to Defendant's Verified Plea in Abatement, and in support thereof, would respectfully show unto the Court the following:

**I.  
Background**

1. The instant matter is a property damage insurance case. This case arises out of an insurance claim filed by Plaintiff against its own insurer, Starstone National Insurance Company f/k/a Torus National Insurance Company, following damage experienced at his property as a result of a wind and/or hail storm. Plaintiff sent Defendants written notice of complaint on August 2, 2016 and filed suit shortly thereafter. Plaintiff has brought claims against Defendants for breach of contract, violations of the Texas Insurance Code Chapters 541 and 542, violations of the Texas Deceptive Trade Practices Act, and for breach of the common law duty of good faith and fair dealing. Plaintiff sent Defendants a DTPA demand letter dated August 2, 2016. It was received by Defendants on or about August 8, 2016. Defendant filed its Verified Plea in Abatement on or about September 16, 2016. Defendant's Verified Plea in Abatement requests that the case be abated until such time that notice is received pursuant to the Insurance Code and Deceptive Trade Practices Act. Both the DTPA and the Texas Insurance Code provide for a sixty

9/26/16  
A true copy I certify  
**LAURA HINOJOSA**  
District Clerk, Hidalgo County, Texas  
By \_\_\_\_\_ 9/26/16



day notice period and therefore abatement is proper. However, since such notice has already been provided, abatement should last no longer than October 7, 2016.

## II. Argument and Authorities

2. There is no specifically required form for giving written notice as required by the Texas Deceptive Trade Practices - Consumer Protection Act ("DTPA"). The DTPA only requires that the notice advise the potential defendant in reasonable detail of (1) the consumer's specific complaint; (2) the amount of economic damages; (3) the damages for mental anguish; and (4) the expenses, including attorneys' fees, reasonably incurred in asserting the claim. TEX. BUS. & COM. CODE § 17.505(a). The Texas Insurance Code only requires such notice to (1) make a specific complaint and (2) outline the actual damages and expenses being asserted against the defendant. See TEX. INS. CODE § 541.154. Plaintiff's written notice letter does in fact comply with the required elements of both statutes. First, Plaintiffs notice letter lays out Plaintiffs specific complaint of Defendant in three pages of great detail. See Exhibit "A". It clearly states that the claim is a result of Defendant's failure to properly handle the claim made by Plaintiff as a result of the storm damage and specifically lists actionable conduct that has been committed by the Defendant. *Id.* Plaintiff even identify numerous provisions of the Texas Insurance Code which were violated by Defendant. *Id.* To meet the requirements of the statutes, the demand letter does not have to say what sections of the DTPA are violated or threaten to file a lawsuit. *Lester v. Logan*, 893 S.W.2d 570, 573 (Corpus Christi 1994, writ denied 907 S.W.2d 452). Second, in order to comply with the statute, Plaintiff must list the amount of economic damages. Plaintiff specifically lists the amount of economic damages in page two of his notice letter. See Exhibit "A". Third, under the statute, Plaintiff is required to list the amount of mental anguish damages. Plaintiff has done just that under "consequential damages" listed in this notice letter. *Id.* Finally, in order to comply with the statute, Plaintiff must list the amount of expenses,

including attorney's fees, which Plaintiff has also specifically done and have listed the amount as such. *Id.* As shown above, Defendant's Verified Plea in Abatement is without merit and should be denied.

**III.**  
**Conclusion**

3. Defendant in its Motion generally requests the case be abated for sixty days and allude to the fact that notice was given. Because adequate notice has been given pursuant to Section 17.505 of the Texas Business and Commerce Code or Section 541.154 of the Texas Insurance Code, the case should be abated, however it should not be abated past October 7, 2016. For these reasons, this Court should partially deny Defendant's Verified Plea in Abatement.

Respectfully submitted,

**THE BYRD LAW FIRM**

s/Jason M. Byrd  
Jason M. Byrd  
State Bar No. 24036303  
448 Orleans  
Beaumont, Texas 77701  
(409) 924.0660/(409) 924.0035 FAX  
ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record, in accordance with the Texas Rules of Civil Procedure this 22<sup>nd</sup> day of September, 2016.

Thomas F. Nye  
Gault, Nye & Quintana, LLP  
P.O. Box 5959  
Brownsville, Texas 78523

**VIA ELECTRONIC SERVICE**

s/Jason M. Byrd  
Jason M. Byrd



**THE BYRD LAW FIRM**  
HOUSTON | BEAUMONT  
Attorneys at Law  
www.txbyrd.com

448 Orleans  
Beaumont, Texas 77701

409.924.0660 Telephone  
409.924.0035 Facsimile

August 2, 2016

Starstone National Insurance Company  
f/k/a Torus National Insurance Company  
c/o Wellington Claims Service, Inc.  
P. O. Box 1116  
Fort Worth, TX 76101

VIA CM/RRR AND REGULAR MAIL

Nicholas Wilson  
6801 Calmont Ave.  
Fort Worth, TX 76116

VIA CM/RRR AND REGULAR MAIL

RE:    Date of Loss:        12/26/15  
       Insured:            Israel Lopez  
       Policy Number:    TNI-22835  
       Claim Number:    TOR-75627  
       Property Address: 5409 Astro Drive, Mission, TX 78574

Dear Sir:

I am working jointly with Chris Tamez and the law firm of Tamez & Ortegon on behalf of Israel Lopez (hereinafter referred to as "Plaintiff") in connection with his claim for property damage at 5409 Astro Drive, Mission, TX 78574. As you are well aware, Plaintiff made a claim against his Texas Homeowner's Insurance Policy. The claim was made due to substantial exterior and interior damage sustained at the residence on or about December 26, 2015 as a result of wind and hail.

The claim was timely reported after the damage was discovered and the home was later inspected. During the inspection, **Starstone National Insurance Company** and **Nicholas Wilson** had the opportunity to visually inspect all of the damage to the interior and exterior of the property in question.

Additionally, you have full knowledge that pursuant to the subject policy, full coverage exists for damage caused by the wind and hail. Nevertheless, a repair estimate, which minimized the damage to the property was drafted and only minimal payments, if any, were made under the policy despite the extensive damage.

Undoubtedly, you are aware of your liability to my client under the Texas Insurance Code, which specifically covers the unfair settlement of claims. **Specifically, Starstone National Insurance Company** is liable to Plaintiff for the following violations of the Texas Insurance Code: 541.060.

By LAURA HINOJOSA Deputy #14  
District Clerk, Hidalgo County, Texas



1. Misrepresenting and/or failing to discuss with Plaintiff, pertinent facts or policy provisions relating to coverage as an issue;
2. Failing to acknowledge, with reasonable promptness, pertinent communications with respect to claims arising under its policy;
3. Failing to adopt reasonable standards for prompt investigation of claims arising under its policies;
4. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability had become reasonably clear;
5. Failing to provide promptly to policyholder a reasonable explanation of the basis in the insurance policy, in relation to the facts or applicable law for denial of the claim or for the offer of a compromise settlement;
6. Failing to affirm or deny coverage of a claim to a policy holder within a reasonable time after proof of loss statements have been completed; and
7. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

Plaintiff is therefore entitled to court costs and attorney's fees, as well as actual damages. Furthermore, since such acts were done knowingly, Plaintiff's damages can be trebled.

**You, NICHOLAS WILSON, are further notified that in accordance with Liberty Mutual Ins. Co. v Garrison Contractors, 41 Sup. Ct. J. 637 (Tex. 1998) you have individual liability separate from that of your employer for violations of the Texas Insurance Code Chapter 541. Therefore, Plaintiff will be seeking damages and compensation from you personally as well.**

The delay in payment to Plaintiff is also in violation of Texas Insurance Code Chapter 542, Sub-chapter B, thus triggering liability on your part to pay the amount of the claim, plus damages consisting of eighteen (18) percent per annum of the amount of the claim, prejudgment interest and reasonable attorney's fees.

Accordingly, on behalf of Plaintiff, demand is hereby made that within sixty (60) days from your receipt of this correspondence that the following amounts be paid:

<b>\$ 27,455.00</b>	<b>in economic damages;</b>
<b>\$ 25,000.00</b>	<b>in consequential damages, including but not limited to statutory treble damages; and</b>
<b>\$ 20,000.10</b>	<b>for expenses, including attorney's fees, which you should note, would increase as this case develops.</b>

Please understand this demand is made in the spirit of compromise. According to our analysis, this demand represents a tremendous savings to you given your potential exposure under the Texas Insurance Code.

Page 3

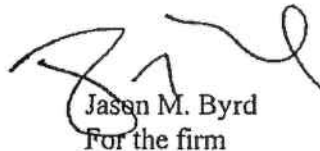
If Plaintiff's claim is not paid within sixty (60) days from the receipt of this correspondence, we would expect to recover Plaintiff's actual damages, along with damages for consequential damages including but not limited to mental anguish, prejudgment interest, attorneys' fees, and damages for the breach of the duty of good faith and fair dealing you owe Plaintiff. In addition, please be aware that recovery in the form of treble damages and additional penalties will also be sought.

This correspondence will also serve as notification that, pursuant to the Texas Civil Practice and Remedies Code 38.001, et seq., you may be required to pay reasonable attorney's fees due to your failure to perform as per the terms of the insurance contract entered into with Plaintiff. Such payments are a result of Plaintiff's retainment of our legal services to pursue his remedy for damages and would be paid in addition to the amount of a valid claim and costs.

As Plaintiff is anxious to have this matter resolved immediately, we trust you will immediately respond, in writing, to this formal demand letter. From this point forward, I am the only contact for you or your attorney regarding this matter.

If you have any questions regarding this matter or need additional information, please feel free to contact this office. However, please do not contact Plaintiff, either orally or in writing, without prior express written permission.

Sincerely,



Jason M. Byrd  
For the firm

JMB/cc

<b>U.S. Postal Service</b> <b>CERTIFIED MAIL</b> Domestic Mail Only <b>For delivery information</b> <b>OFFICIAL</b> Certified Mail Fee Extra Services & Fees (check box) <input type="checkbox"/> Return Receipt (hardcopy) <input type="checkbox"/> Return Receipt (electronic) <input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Adult Signature Required <input type="checkbox"/> Adult Signature Restricted Delivery Postage Total Postage and Fees Sent To Street and Apt. No., or PO Box City, State, ZIP+4 <sup>®</sup>		<b>SENDER: COMPLETE THIS SECTION</b> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: StarStone National Insurance Company F/K/a Texas National Insurance Company P.O. Box 116 Fort Worth, TX 76101 9590 9402 1916 6104 5182 40 2. Article Number (Transfer from service label) 7016 0600 0001 0341 5439		<b>COMPLETE THIS SECTION ON DELIVERY</b> A. Signature X <i>Rockney Smith</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name) C. Date of Delivery AUG 8 2016 D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:	
PS Form 3800, April 2015 P		PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	

STATE OF TEXAS                    §  
COUNTY OF JEFFERSON        §                    VERIFICATION

BEFORE ME, the undersigned Notary Public, personally appeared JASON M. BYRD who, being by me duly sworn on his oath, deposed and said that he has read Plaintiff's Response to Defendant Starstone National Insurance Company f/k/a Torus National Insurance Company's Verified Plea in Abatement and that the statements contained in the foregoing Response are within his personal knowledge and are true and correct.

  
\_\_\_\_\_  
Jason M. Byrd

SUBSCRIBED AND SWORN TO BEFORE ME on this the 28<sup>th</sup> day of September, 2016 by JASON M. BYRD.



  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS





Electronically Filed  
9/23/2016 11:19:22 AM  
Hidalgo County District Clerks  
Reviewed By: Armando Cantu

Attorney for Defendant

Electronically Filed  
9/26/2016 8:55:46 AM  
Hidalgo County District Clerks  
Reviewed By: Armando Cantu

CAUSE NO. C-3935-16-D

ISRAEL LOPEZ	§	IN THE DISTRICT COURT
	§	
VS.	§	206 <sup>TH</sup> JUDICIAL DISTRICT
	§	
STARSTONE NATIONAL INSURANCE	§	
COMPANY f/k/a TORUS NATIONAL	§	
INSURANCE COMPANY and	§	
NICHOLAS WILSON	§	HIDALGO COUNTY, TEXAS

**DEFENDANT NICHOLAS WILSON'S ORIGINAL ANSWER**  
**AND PLEA IN ABATEMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, NICHOLAS WILSON, Defendant in the above-styled and numbered cause and makes and files this, his Original Answer in reply to Plaintiff's Petition, and for such answer and plea in abatement would respectfully show unto the Court the following:

1.

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies the allegations contained within Plaintiff's Petition and demand strict proof thereon by a preponderance of the credible evidence in accordance with the laws of the State of Texas.

2.

Pleading further and without waiver of the above, Defendant denies the occurrence of all conditions precedent to Plaintiff's claim. Without limiting the foregoing, Defendant denies that the following has occurred:

- a. that there has been full compliance with all terms and conditions of the insurance policy at issue as required prior to Plaintiff bringing suit, including, but not limited to, the requirement that payment is only due after agreement is reached on the amount of loss or an appraisal award has been made; and
- b. that Plaintiff has provided the required written notice under Section 541.154 of the Texas Insurance Code at least 60 days prior to filing suit.

DATE 9/26/16  
A true copy certify  
LAURA HINOJOSA  
District Clerk, Hidalgo County, Texas  
By [Signature] Deputy #14



3.

Pleading further and without waiver of the above, Defendant requests that this Court compel mediation pursuant to TEXAS INSURANCE CODE § 541.161(a). This mediation is required under the Texas Insurance Code and Texas Business & Commerce Code. TEX. INS. CODE § 541.161(b).

4.

**PLEA IN ABATEMENT**

A. Plaintiff has asserted claims against Defendant pursuant to Chapter 17.50 of the Texas Business & Commerce Code (also referred to as the “DTPA”) in Plaintiff’s Original Petition. As a prerequisite to filing a suit seeking damages pursuant to the DTPA, a claimant shall give written notice at least sixty (60) days prior to filing suit. A Defendant against whom a suit is pending who does not receive adequate written notice may file a plea in abatement. TEX. BUS. & COM. CODE §17.505(Vernon 1987).

B. Defendant has not received adequate written notice in compliance with the requirements of the DTPA.

C. Accordingly, Defendant requests that this Court abate this case as provided by Section 17.505(d) of the Texas Business & Commerce Code.

5.

**PLEA IN ABATEMENT**

A. In Plaintiff’s Original Petition, Plaintiff has also alleged causes of action pursuant to Chapter 541 of the Texas Insurance Code. Chapter 541.154 provides, in pertinent part, “[a] person seeking damages in an action against another person under this subchapter must provide written notice to the other person not later than the 61<sup>st</sup> day before the date the action is filed.”

TEX. INS. CODE §541.154 (Vernon Supp 2005). Additionally, Chapter 541.155 of the Texas Insurance Code provides that the Court shall abate the action if the Court finds that the claimant failed to provide the requisite notice. TEX. INS. CODE §541.155 (Vernon Supp 2005).

B. Defendant has not received adequate written notice in compliance with the requirements of the Texas Insurance Code.

C. Accordingly, Defendant is also entitled to an abatement of these proceedings pursuant to Chapter 541 of the Texas Insurance Code.

6.

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendant hereby gives actual notice to Plaintiff that any and all documents and materials produced in response to written discovery may be used as evidence in this case; and, that any such materials may be used as evidence against the party producing the document at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the document and/or materials produced in discovery.

7.

Requests for Disclosure

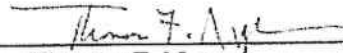
At the time required by law or the Rules, this Defendant requests the Plaintiff to respond to all of the matters in TRCP 194.2.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon final hearing hereof, that Plaintiff not recover against Defendant and that Defendant goes hence with his costs without day and for such other and further relief, at law or in equity, to which Defendant may justly show himself entitled to receive.

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9/26/2016 8:55:46 AM  
Hidalgo County District Clerks  
Reviewed By: Armando Cantu

Respectfully submitted,

Gault, Nye & Quintana, L.L.P.  
P.O. Box 6666  
Corpus Christi, Texas 78466  
(361) 654-7008  
(361) 654-7001 Telecopier  
[tnye@gnqlawyers.com](mailto:tnye@gnqlawyers.com)

By:   
Thomas F. Nye  
State Bar No. 15154025

William Gault  
State Bar No. 07765050  
Gault, Nye & Quintana, L.L.P.  
P.O. Box 5959  
Brownsville, Texas 78523  
(956) 544-7110  
(956) 544-0607 Telecopier  
[wgault@gnqlawyers.com](mailto:wgault@gnqlawyers.com)

Attorneys for Defendant Nicholas Wilson

**CERTIFICATE OF SERVICE**


I, Thomas F. Nye, hereby certify that on the 26<sup>th</sup> day of September, 2016, a true and correct copy of the above and foregoing document was served upon the following counsel as indicated:

Attorneys for Plaintiff

Jason M. Byrd  
The Byrd Law Firm, P.C.  
Email: [jason@txbyrd.com](mailto:jason@txbyrd.com)

Chris Tamez  
Tamez & Ortegon, PLLC  
Email: [jamezandortegon@gmail.com](mailto:jamezandortegon@gmail.com)

**VIA E-FILING**

  
Thomas F. Nye



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9/26/2016 8:55:46 AM  
Hidalgo County District Clerks  
Reviewed By: Armando Cantu

VERIFICATION OF NICHOLAS WILSON


THE STATE  
OF TEXAS

§  
§  
§

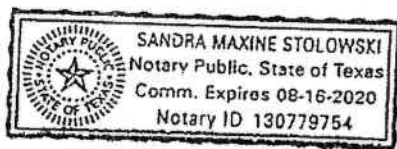
BEFORE ME, the undersigned Notary Public in and for the State of Texas, on this day personally appeared Nicholas Wilson, known to me to be the person whose name is subscribed hereto, who being first duly sworn in the manner provided by law, on oath stated as follows:

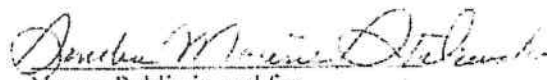
"My name is Nicholas Wilson. I am over the age of 18 years, am competent and authorized to testify herein and have personal knowledge of the facts herein. I have read Paragraphs 4B and 5B of Defendant's Original Answer and they are true and correct."


Further affiant sayeth not.

  
\_\_\_\_\_  
Nicholas Wilson

SWORN TO AND SUBSCRIBED TO BEFORE ME, on this the 23 day of September, 2016, to witness my hand and official seal of office.



  
\_\_\_\_\_  
Notary Public in and for  
the State of Texas

DATE 9/26/16  
A true copy | certify  
LAURA HINOJOSA  
District Clerk, Hidalgo County, Texas  
By  Deputy #14

Electronically Filed  
9/26/2016 8:55:46 AM  
Hidalgo County District Clerks  
Reviewed By: Armando Cantu

CAUSE NO. C-3935-16-D

ISRAEL LOPEZ

VS.

STARSTONE NATIONAL INSURANCE  
COMPANY f/k/a TORUS NATIONAL  
INSURANCE COMPANY and  
NICHOLAS WILSON

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IN THE DISTRICT COURT

206<sup>TH</sup> JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

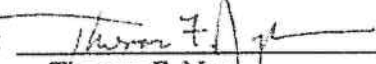
**DEFENDANT'S DEMAND FOR JURY**

COMES NOW, NICHOLAS WILSON, Defendant in the above-referenced cause, and demands a trial by jury. The jury fee has previously been paid by the Plaintiff.

Respectfully submitted,

Gault, Nye & Quintana, L.L.P.  
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(361) 654-7008  
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By:

  
Thomas F. Nye

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Attorneys for Defendant Nicholas Wilson

DATE 9/26/16  
A true copy I certify  
LAURA HINOJOSA  
District Clerk, Hidalgo County, Texas  
By  Deputy #14

Electronically Filed  
9/26/2016 8:55:46 AM  
Hidalgo County District Clerks  
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**CERTIFICATE OF SERVICE**

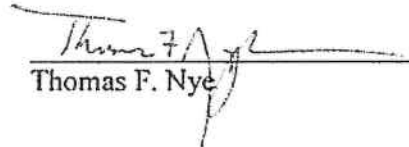
I, Thomas F. Nye, hereby certify that on the 26<sup>th</sup> day of September, 2016, a true and correct copy of the above and foregoing document was served upon the following counsel as indicated:

*Attorneys for Plaintiff*

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Chris Tamez  
Tamez & Ortegon, PLLC  
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**VIA E-FILING**

  
Thomas F. Nye